

EXHIBIT N

From: [Hang Le](#)
To: [Anita K. Clarke](#)
Subject: RE: Botten Follow-up Meet and Confer
Date: Monday, January 27, 2025 11:00:34 AM
Attachments: [image001.jpg](#)

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Good morning Anita,

I've spoken to Dale further about County Defendants' contemplated MSJ for the Botten case. After further consideration regarding the evidence, we are willing to dismiss (1) the excessive force claim, (2) the substantive due process claim, (3) the battery claim, and (4) the Bane Act claim.

However, we disagree with County Defendants' position that there is no evidence to support Plaintiffs' negligence and NIED claims and believe in good faith that there is evidence to support those two claims. All persons are required to use ordinary care to prevent others from being injured as a result of their conduct and police officers are not exempt from this general rule. A duty may be based on the "general character" of the activity engaged in by the defendant. *J'Aire Corp. v. Gregory*, 24 Cal.3d 799, 803 (1979). Here, we believe there is substantial evidence that shows that Sergeant Vaccari and Deputy Adams had a duty to ensure the safety all of uninvolved bystanders in dealing with a high-risk, barricaded subject situation and they breached that duty when they failed to follow specific training on dealing with barricaded subjects in order to ensure the safety of everyone, including uninvolved individuals. This negligent conduct was a proximate cause of the Bottens' harm, that is, it was a substantial factor in bringing about the Bottens' harm. Since Plaintiff Annabelle Botten's NIED claim is an offshoot of the Bottens' negligence claim, and it is undisputed that Annabelle is a close family member who resided with the injured parties and who witnessed the event that caused injury to her family, we believed there is also substantial evidence to support Annabelle Botten's NIED claim.

Please advise as to how you would like to proceed regarding our position above.

Best,
Hang

Hang D. Le, Esq. | Law Offices of Dale K. Galipo | 21800 Burbank Blvd., Suite 310, Woodland Hills, CA 91367 | Office: +1.818.347.3333 | Fax: +1.818.347.4118 | Email: hlee@galipolaw.com

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From: Anita K. Clarke <aclarke@lynberg.com>
Sent: Friday, January 24, 2025 2:56 PM
To: Hang Le <hlee@galipolaw.com>; 'Dale K. Galipo' <dalekgalipo@yahoo.com>
Cc: Shannon Gustafson <sgustafson@lynberg.com>; Amy R. Margolies <amargolies@lynberg.com>; diana.esquivel@doj.ca.gov
Subject: RE: Botten Follow-up Meet and Confer

Thanks for getting back to me, Hang.

Regards,

ANITA K. CLARKE-VALENCIA, ESQ.

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Fax: (714) 937-1003



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From: Hang Le <hlee@galipolaw.com>
Sent: Friday, January 24, 2025 2:55 PM
To: Anita K. Clarke <aclarke@lynberg.com>; 'Dale K. Galipo' <dalekgalipo@yahoo.com>
Cc: Shannon Gustafson <sgustafson@lynberg.com>; Amy R. Margolies <amargolies@lynberg.com>; diana.esquivel@doj.ca.gov
Subject: RE: Botten Follow-up Meet and Confer

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Hi Anita,

I have not been able to meet with Dale today about this matter but will be meeting with him

about it on Monday.

Best,
Hang

Hang D. Le, Esq. | Law Offices of Dale K. Galipo | 21800 Burbank Blvd., Suite 310, Woodland Hills, CA 91367 | Office: +1.818.347.3333 | Fax: +1.818.347.4118 | Email: hlee@galipolaw.com

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From: Anita K. Clarke <aclarke@lynberg.com>

Sent: Friday, January 24, 2025 2:53 PM

To: Hang Le <hlee@galipolaw.com>; 'Dale K. Galipo' <dalekgalipo@yahoo.com>

Cc: Shannon Gustafson <sgustafson@lynberg.com>; Amy R. Margolies <amargolies@lynberg.com>; diana.esquivel@doj.ca.gov

Subject: RE: Botten Follow-up Meet and Confer

Hello Hang,

Following up - we haven't heard back from you regarding the below. I believe you were going to try to meet with Mr. Galipo today.

Thanks,

ANITA K. CLARKE-VALENCIA, ESQ.

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From: Anita K. Clarke

Sent: Wednesday, January 22, 2025 1:13 PM

To: Hang Le <hlee@galipolaw.com>; 'Dale K. Galipo' <dalekgalipo@yahoo.com>

Cc: Shannon Gustafson <sgustafson@lynberg.com>; Amy R. Margolies <amargolies@lynberg.com>; diana.esquivel@doj.ca.gov

Subject: Botten Follow-up Meet and Confer

Hello Hang,

Thanks for meeting with me today as required by Local Rule 7-3 prior to the filing of County Defendants Motion for Summary Judgment in the Botten matter.

As expressed during this meeting, we are concerned that the case against Deputy Adams and Deputy Vaccari appears to be moving forward without any evidence against either that they **caused** the injuries as alleged by the Botten family. There is no evidence Vaccari discharged his firearm. As for Deputy Adams, Plaintiff has no admissible evidence he pointed his gun in the direction of the Botten house or that the bullets from Deputy Adams made contact with the Bottens in any way. Mere speculation without evidence does not defeat Summary Judgment.

The Bottens have all testified that they were inside of their home somewhere near the entry way where the front door is located. The video evidence is clear that Deputy Adams gun was never pointed in the direction of the Botten house, let alone toward that door. Further, expert disclosures are due next week. We will be providing you with our disclosures including evidence from a ballistics expert, that will be included with our Motion for Summary Judgment that the bullets fired by Deputy Adams can be excluded as the source of the injuries to the Bottens, based not only on their trajectory as should be readily apparent on the video, but also based on the type of ammunition he was using and the injuries sustained. We can only presume that Plaintiff does not have any similar expert testimony that confirms the Botten injuries were caused by Deputy Adams, as none was offered during our meet and confer and the purpose of a meet and confer is to resolve such issues without Court intervention.

As for the Integral Participant doctrine and qualified immunity, I understand you are relying partially on *Peck v. Montoya* and did not cite any other authority during our meeting. I reviewed *Peck* and it bears no similarity to the Botten case, as there were no injuries to bystanders at issue in *Peck*. Given the complete lack of similarity, there is nothing in the *Peck* case that would have placed Deputy Adams or Vaccari on notice that their actions vis a vis the Botten's was unconstitutional.

The deputies in *Peck* were not entitled to qualified immunity because there was a triable issue whether decedent was armed and/or arming himself, and there was clearly established law that if he was not arming himself then the deputies would not be entitled to qualified immunity. This is a much different situation than posed by the Botten case and I do not know

of any clearly established law that would hold Adams and Vaccari liable under an integral participant theory or otherwise nor have you provided any.

Do you have any other cases that support your position that Adams and Vaccari are not entitled to qualified immunity in the Botten matter, for us to consider before proceeding with our Motion for Summary Judgment?

As for your Negligence and Negligent Infliction of Emotional Distress claims against Vaccari and Adams, my understanding is that Plaintiffs believe even if Adams' bullets did not make contact with the Bottens, they should still be liable simply because they were there and it was foreseeable the Bottens would have been injured or at least that is the position you conveyed during the meet and confer. Again, I don't know of any case law that creates a general duty for a deputy to protect the community at large from another law enforcement officer's use of force or from his own force on the speculative theory that it may have caused injury, but did not actually do so. I am sure you are aware even setting aside the complete lack of any case law supporting duty, Negligence requires that Defendants actually cause harm. For all the reasons already set forth Deputy Adams and/or Vaccari did not cause the harm to the Bottens.

Based on the foregoing and for all the reasons set forth in our meet and confer correspondence and during our meeting today, we believe Plaintiff's continued insistence on pursuing Sgt. Vaccari and Deputy Adams in the Botten matter, borders on frivolous. Should we be forced to file our Motion for Summary Judgment to garner dismissal of our clients, we will consider seeking attorneys' fees under Rule 11 and/or 42 U.S.C. 1988 for what the discovery and evidence have now shown is not a viable case by the Bottens against the County Defendants.

I understand you will be meeting further with Dale to discuss these issues. In the event that Plaintiff is willing to dismiss any or all of the claims against Sergeant Vaccari and/or Deputy Adams please advise immediately so that we can prepare the necessary dismissal of these claims and avoid wasting the Court's time on these issues.

Regards,

ANITA K. CLARKE-VALENCIA, ESQ.

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